

DEPARTMENT OF STATE REVENUE

02970524.LOF

LETTER OF FINDING: 97-0524
CLAIM FOR REFUND NUMBER: 97-0524 ITC
GROSS INCOME TAX
FOR FISCAL YEARS 1991 & 1992

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax — Small Business Corporation

Authority: IC 6-2.1-3-24.5; IRC §1361

Taxpayer protests the denial of a claim for refund of gross income taxes paid.

II. Tax Administration — Fees

Taxpayer protests the imposition of collection and warrant fees applied to its liability.

STATEMENT OF FACTS

The taxpayer is a registered retail merchant transporting liquid petroleum gas for single customer. During the assessment period, the taxpayer was owned by J and S. The customer was solely owned by J. The companies were not connected through a common parent company at any time. The taxpayer and the customer filed consolidated federal 1120 income tax returns throughout the assessment period. The taxpayer also filed under special corporation status in Indiana. In the audit, the Department accepted the taxpayers' affiliated status, as federally filed, and determined the taxpayer to be a C corporation. The taxpayer failed to amend its federal returns as they were out of the statute of limitations. Additional facts will be provided below, as necessary.

I. Gross Income Tax — Small Business Corporation

DISCUSSION

Indiana has incorporated the federal provisions for determining corporation status into its own law. For a corporation to qualify for Special Corporation status in Indiana it must meet the requirements of code section 6-2.1-3-24.5 which states in part:

(a) For purposes of this section, "small business corporation" has the same definition that term has in Section 1361(b) of the Internal Revenue Code...

IRC §1361(b)(1) defines a small business corporation as a "domestic corporation which is not an ineligible corporation..."

IRC §1361(b)(2) defines ineligible corporations. Paragraph (A) identifies an ineligible corporation as one which *is a member of an affiliated group*. Emphasis added.

The taxpayer argues it filed federal consolidated returns throughout the assessment period as it mistakenly believed that common stock ownership meant the companies were part of an "affiliated group." However, the fact that the company mistakenly filed a consolidated federal return did not in reality make it a member of an affiliated group and therefore ineligible for special corporation status in Indiana. The IRC and the Indiana Code require the corporation to be a member of an affiliated group to be ineligible. There is no express authority in either to hold a company bound to an affiliated status which was mistakenly claimed.

FINDING

The taxpayer's protest is sustained. It is eligible for special corporation status. It has proven to the Department's satisfaction it was not a member of an affiliated group and only mistakenly filed as such in its federal returns. However, as the tax was based on adjusted gross income (not gross income) throughout the assessment period, there will be no refund of gross income tax, penalties and interest.

II. Tax Administration — Fees

DISCUSSION

The taxpayer protests the imposition of collection and warrant fees applied to its liability while pursuing its protest of gross income tax assessment. As the taxpayer's protest in Issue I (above) has been sustained all fees paid will be refunded.

FINDING

The taxpayer's protest is sustained.